

Town of Lincoln

100 Old River Road, Lincoln RI

Zoning Board of Review

July 8, 2008 Minutes

Present: Jina Karampetsos, Raymond Arsenault, John Bart, Arthur Russo, David Gobeille, and Town Solicitor Anthony DeSisto

Excused: Gabriella Halmi, Kristen Rao

Minutes

Motion made by Member Arsenault and seconded by Member Russo to accept the June 2008 Minutes as presented. Motion carried with a 5-0 vote.

Applications:

Charles Bishop, 30-32 Walker Avenue, Lincoln, RI – Special Use Permit to maintain existing five unit and add two additional units to property located at 30-32 Walker Avenue, Lincoln, RI.

AP 3, Lot 171 Zoned: RG 7

Represented by: John Shekarchi, Esquire, 132 Old River Road, Lincoln, RI

Attorney Shekarchi addressed the Board stating applicant wanted to ask for a special meeting. Member Arsenault replied that would not be

possible because of notice and advertising issues. Attorney then asked that the application be continued to the August agenda.

Motion made by Member Russo to continue the application to the August agenda. Motion seconded by Member Arsenault. Motion carried with a 5-0 vote.

Eparchy of St. Maron of Brooklyn, NY, 50 Main Street. Pawtucket, RI – Extension of Decision granted on July 10, 2007 for a Special Use Permit regarding construction of a church.

AP 45, Lot 361 Zoned: RA 40

Represented by: John Shekarchi, Esquire, 132 Old River Road, Lincoln, RI

A Decision was granted to applicant on July 10, 2007. Applicant is asking for a 6 month extension to expire December 2008 because the parish has approved a budget and drawings for this project and are not ready to proceed.

Member Arsenault made a motion to grant a six month extension of Decision to expire December 2008. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Edward & Linda Sliney, 1159 Smithfield Avenue, Lincoln, RI – Dimensional Variance seeking lot width and rear yard setback relief for the construction of a single family home on Branch Avenue,

Lincoln, RI.

AP 2, Lot 103 Zoned: RG 7

**Represented by: John Shekarchi, Esquire, 132 Old River Road,
Lincoln, RI**

This is a vacant lot owned by applicant since the mid 1980s with a four unit condominium on the adjacent lot. Applicant came before this Board for a use variance on this lot but withdrew the application without prejudice. They are now seeking lot width and dimensional relief and meet all other requirements for an RG 7 zone. Town water and sewer are available.

Applicant submitted into the record:

Exhibit #1 House plan showing example of proposed house style

Exhibit #2 Certificate of Completion from Zoning Official

Exhibit #3 Report from Pimentel Consulting Inc.

Witness

Edward Pimentel, AICP, Pimentel Consulting Inc.

Member Arsenault made a motion to accept Mr. Pimentel as an expert witness. Motion seconded by Member Bart. Motion carried with a 5-0 vote

The subject property was previously a split zone with eight boundary lines. Abutting the property is an industrial warehousing operation. Within a one block radius there are seventeen two unit dwellings, two

three unit dwellings and a single four unit dwelling. The proposed home would be forty feet in length by twenty six feet in width for a total of 1,040 sq.ft. Applicant is seeking thirty foot lot width relief – zoning requires sixty feet. The lot is in compliance with the Lincoln Comprehensive Plan for property in a high density area and has 6.13% lot coverage. Originally asked relief for two unit dwelling and are now seeking relief for single family home. The lot is irregularly shaped and well established.

Witness

Donald Morash, Jr., Broker Abbott Properties, 380 Jefferson Boulevard, Warwick, RI

Member Bart made a motion to accept Mr. Morash as an expert witness. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Submitted into the record Real Estate Summary as Exhibit #4. Lot is irregularly shaped and does not feel proposal will have a negative effect on the neighborhood. New construction always has a positive effect. The hardship applicant seeks is due to the uniqueness of the land and there is no other beneficial use for the lot. Relief they are seeking is the least relief necessary. If relief is not granted the owner would be denied all beneficial use of the property.

Opposed

Keith Hebert, 8 Branch Avenue, Lincoln Represented by Attorney

Philip Laffey.

Submitted into the record letter from Lucinda Hannus-Letoile, Engineering dated September 18, 1987 (Exhibit #5) informing applicants that a corrective deed needed to be filed because merger language was not included in the deed filed in the Town Clerk's office to get relief. A Quitclaim Deed had been recorded on June 15, 1987 in Book 220 at pages 139 and 140 and it was their intent to merge lots 33 & 103. Town considers the two lots merged. Lot 103 is paved with a basketball court. The Ordinance requires two parking spaces per unit and the submitted plan shows parking for four spaces. Lot 33 has no vehicular access to Smithfield Avenue – just from lot 103. There is no subdivision evidence just evidence of merger. There was pending adverse possession suit in Superior Court but he does not know the outcome. He presented a copy of a merger deed into the record. Chair asked if the deed presented was a defected deed and he replied "yes". Chair asked he based the defected deed on the letter from the town and attorney replied the town had required a deed be filed. Member Arsenault asked when the Town Council rezoned the lot to RG 7 what did his clients believe. Attorney replied he was not present at that meeting but felt the intent of the deed was to merge the lots. The Tax Assessor deemed them as two lots and not merged. Member Arsenault asked if he felt the single family home impairs the area. Attorney replied they need parking for ten cars but are only providing for four. His clients are concerned about density in the area. The land is developed and applicant has had beneficial since 1987. Member Russo asked what the easement on lot 33 was used

for and attorney replied access to Lot 3. They have a shed, Jacuzzi and basketball court on the lot.

Attorney Shekarchi informed the Board that there are no violations on record. The easement has been filed and the adverse possession claim has been dismissed in Superior Court. Attorney submitted into the record:

Exhibit #6 Zoning Certificate dated December 12, 2006 from Russell Hervieux, Zoning Official

Exhibit #7 Grant of Easement

Exhibit #8 Superior Court Dismissal Stipulation

Exhibit #9 Letter to applicant from Tax Assessor dated September 21, 1995

Chair Karampetsos read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The proposed dimensional variance of the lot width is to clear up the pre-existing nonconformance of this parcel of land. This record lot was platted before present day zoning regulations. The proposed rear lot setback variance is needed to build a reasonably sized single family house on the existing lot of record. The Planning Board recommends Approval of this application. The Board finds that the relief requested is the least relief needed and will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln

Zoning Ordinance or the Lincoln Comprehensive Plan

Chair read into the record correspondence dated September 21, 1995 from Neal J. Dupuis, Tax Assessor addressed to the applicants.

Mr. Pimentel stated it was his opinion the lots are not merged.

Witness

Edward Sliney, Applicant

His builder drew the plans for the addition back in 1987. The addition encroaches two feet onto the adjoining lot. He cannot recall conversations with the town back in 1987.

Attorney Shekarchi stated the town made an error in giving a certificate of occupancy for the two foot encroachment. It is on the site plan and applicant did not encroach onto the neighbor but land owned by self. Applicant informed the board that the shed has been on the property since 1960 and the basketball court was there when he purchase the property from his father.

Member Russo asked what the purpose of the 1987 deed was. Applicant replied he could not recall. Russell Hervieux, Zoning Official informed the board that the setbacks were measured from the property line and the submitted plan does not show encroachment.

Member Arsenault made a motion to approve the application granting

14.49 feet from the easterly property boundary line and lot width relief of 30 feet. He further stated:

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.**
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.**
- The relief requested is the least relief necessary.**
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property**

Motion to approve seconded by Member Russo. Motion carried with a 4-1 vote with Member Gobeille voting nay.

Estate of Maria Rose Savoie, 33 Old Oak Drive, Warwick, RI – Dimensional Variance seeking lot width relief for the construction of a single family home for property located on Church Street, Manville, RI.

AP 38, Lot 25 Zoned: RG 7

Represented by: John Shekarchi, Esquire, 132 Old River Road,

Lincoln, RI

This application was continued from the June agenda because of a notice issue. Applicant is seeking lot width relief. Property has access to town water and sewer. Submitted into the record photo of vacant lot as exhibit #1. Only relief applicant is asking for is lot width relief which is a substandard lot of record. After discussion between Attorney Shekarchi and the Board it was determined that applicant had 50.42 feet of frontage and lot width relief was not necessary. Applicant requested that the application be withdrawn without prejudice.

Member Gobeille made a motion to accept withdrawal of the application without prejudice based on the finding that relief was not necessary. Motion seconded by Member Bart. Motion carried with a 5-0 vote.

Jose & Aurora Almeida, 201 Broad Street, Cumberland, RI – Special Use Permit to remove existing building and construct a five unit residential building on property located at 1683-1685 Lonsdale Avenue, Lincoln, RI. AP 5, Lot 26 Zoned: RG 7

Applicant requested that the application be continued to the August agenda.

Member Arsenault made a motion to continue the application to the

August 5, 2008 agenda. Motion seconded by Member Bart. Motion carried with a 5-0 vote.

Robert C. & Jean Burritt Robertson, 57 Water Way, Barrington, RI – Dimensional Variance seeking rear yard setbacks for subdivision of lot located at 1011 Great Road, Lincoln, RI.

AP 23, Lot 04 Zoned: RS 20 & RA 40

Existing house on the lot is in a RS 20 and RA 40 zone. Home has been in the family for sixty years and house itself is one hundred sixty years old. There is a deck on the south side that extends six inches into the rear setback. House sits on 2.45 acres and has 571.48 frontage on Great Road. Applicants want to save the existing historic house but need rear yard relief. Subdivision papers have been filed with no master plan approval. Need to obtain zoning first. Russell Hervieux, Zoning Official informed the Board that applicant has received master plan approval but need preliminary plan approval.

Opposed

Robert Shannahan, 1013 Great Road, Lincoln

He has lived in area for 35 years and would prefer property remain as a single family lot. Feels applicant are before the Board for financial gain by subdividing the lot.

Opposed

Kathy Furtado, 1007 Great Road, Lincoln

Applicants will not live at the site but are subdividing for financial gain.

Chair read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The proposed dimensional variance of the rear yard setback is to clear up the pre-existing nonconformance of the existing house. This record lot and house was platted and built before present day zoning regulations. The Planning Board recommends Approval of this application. The Planning Board finds that the relief requested will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.

Member Arsenault made a motion to grant the application seeking 6 inches on the southeast side, 15'4" on the northeast side. He further stated:

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.**
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- The granting of this variance will not alter the general character of**

the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.

- The relief requested is the least relief necessary.**
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property**

Motion seconded by Member Bart. Motion carried with a 4-1 vote with Member Russo voting nay.

MARTBRO Properties, 960 Smithfield Avenue, Lincoln, RI – Special Use Permit for professional office space and insurance agency plus two residential units and Special Use Permit for mixed use on one lot.

AP 6, Lot 181 Zoned: RG 7 & RL 9

Represented by: John Shekarchi, Esquire, 132 Old River Road, Lincoln, RI

Proposed use will not be intrusive and is a conditional permitted use. Town ordinance permits modification to the site which will be serviced by town water and sewer. The existing garage will remain on the property.

Witness

Edward Pimentel, AICP, Pimentel Consulting Inc.

Member Arsenault made a motion to accept Mr. Pimentel as an expert witness. Motion seconded by Member Bart. Motion carried with a 5-0

vote

Mr. Pimentel submitted into the record as Exhibit #1 proposal analysis. Applicant is proposing no physical expansion of the property which meets off street parking requirements. They have been before this Board on two separate occasions for this property. Duplexes are permitted and already utilized in a mixed use fashion. This is a corner lot marketable only to office uses. There are several offices in the area and the proposed use is authorized and permitted. Applicant meets all criteria for a special use permit and the present use has been there for twenty years. Existing sign on the property will not change.

Witness

James Venerri, Beretta Realty

He is a certified appraiser licensed in Rhode Island and Massachusetts. Property has been listed for 6-9months. Potential clients will be business oriented looking for professional office space. Does not feel what applicant is proposing will alter the area? because there are other offices on the street.

Opposed

Richard Pina, 940 Smithfield Avenue, Lincoln

He has lived in area for 34years. Wanted to know what was shown on the surveyor map for boundaries. Russell Hervieux, Zoning Official replied surveyor map Board was reviewing was same as that

submitted with the application. Mr. Pina stated Ridge Road is an easement with map showing 50 feet but he had measured it at 16 feet. Board replied that overgrowth on the easement may be the reason he did not measure 50 feet. Mr. Pina insisted that the measurements on the plan were incorrect. Mr. Pina informed the Board that previous owners, Robert Connolly, had not obtained property zoning and the lot was not mixed use.

Attorney Shekarchi submitted into the record as Exhibit #2 Zoning Certificate dated March 3, 2005 and signed by Russell Hervieux, Zoning Official stating the property is mixed residential and business.

Chair read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted site plans and application. Based on the submitted plans, the Planning Board feels that the applicant has successfully addressed all of the requirements of a special use permit. The Planning Board feels that this plan represents good land development and recommends Approval of this special use permit. The Planning Board feels that granting this special use permit will not alter the general character of the surrounding area nor impair the intent or purpose of the Zoning Ordinance, nor the Comprehensive Plan.

Motion made by Member Russo to grant the Special Use permit. He further stated:

- That the Special Use is specifically authorized under this Ordinance
- That the Special Use meets all the criteria set forth in this Ordinance authorizing such special use
- That the granting of the Special Use will not alter the general character of the surrounding area
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan

Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Paul C. D'Amore, 10 Lincoln Avenue, Lincoln, RI – Dimensional Variance seeking rear yard setback for the construction of a deck.

AP 9, Lot 61 Zoned: RL 9

Applicant not present. Chair made a recommendation to deny the application due to lack of evidence to support the application and non attendance of applicant. Recommendation carried with a 5-0 vote.

Motion made by Member Bart to adjourn the meeting. Motion seconded by Member Arsenault. Motion carried with a 5-0 vote.

Ghislaine D. Therien

Zoning Board Recording Secretary